

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Ft. Worth Division

ERGUN CANER,

Plaintiff,

v.

JASON SMATHERS,

Defendant.

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Civil Action No. 4:13-cv-00494 (Y)

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DECLARATION OF KELLY MCCLANAHAN, ESQ.

I, KELLY MCCLANAHAN, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify. I make this Declaration on personal knowledge and in support of Defendant's Petition for Attorneys' Fees (filed May 1, 2014).

2. I am Defendant Jason Smathers' attorney of record in this case and have advised and represented Smathers in several other administrative matters related to Information and Privacy Law since 2010.

3. I received my Master of Arts ("M.A.") degree from Georgetown University in Security Studies in May 2003. I received my Juris Doctorate ("J.D.") from the American University Washington College of Law in May 2007. I received my Master of Laws ("LL.M.") degree in National Security Law from Georgetown University Law Center in December 2009. I have been a practicing attorney for seven years and have specialized in Information and Privacy Law and National Security Law the entire time.

4. I have spent over fifty (50) hours defending this case, although I am only petitioning the Court for 36.9 hours. I arrived at this figure by removing the following items:

5. I have removed a significant majority of the time spent discussing the case with my law clerk.

6. I have removed a significant majority of the time spent sending and receiving small emails.

7. I have endeavored throughout this case to minimize the amount of time spent doing research or writing. I accomplished this by tasking my law clerk with much of the research work and by also tasking Smathers with factual research as necessary.

8. I have not billed for any work done by Joshua Autry, Jonathan Autry's counsel, even when it benefitted both Defendants, although I have billed for the time I spent collaborating with him.

9. Accordingly, I have created the below chart of billable hours, divided into tenths of an hour and divided between me ("KM") and my law clerk ("JA"), with brief descriptions of the work performed.

Date	Hours (KM)	Hours (JA)	Work description
6/19/13	0.6		Reviewed complaint and background story
6/20/13	0.2		Tasked JA with research re: impleader in mutually exclusive courts
6/20/13		1.5	Research on impleader in mutually exclusive courts, FRCP 12(b)(7)
6/21/13	0.3		Addressed JA's initial research and refocused research tasking on supplemental jurisdiction
6/21/13	0.1		Discussed anti-SLAPP laws and jurisdictional questions with Jason ¹
6/22/13		2.5	Drafting memo on supplemental jurisdiction
6/23/13		1	Drafting follow up on supplemental jurisdiction

¹ Jason Smathers, the Defendant.

6/23/13	0.3		Tracked down Caner's existing copyrights and tasked Jason with reviewing them re: derivative use
6/24/13		2	5th vs 9th Cir quick summary on copyright registration
6/24/13	0.2		Reviewed DMCA takedown notices and counternotices
6/26/13	0.5		Discussed case with Jason
7/1/13	0.1		Applied for N.D. Tex. bar admission
7/2/13	0.5		Discussed case with Mark Rumold @ EFF
7/3/13	0.7		Discussed case with Rodney ²
7/3/13	0.2		Discussed case with Jason
7/8/13	0.2		Discussed case with Jason
7/8/13		1	5th v 9th Cir research on registration and fair use
7/10/13		1	5th v 9th Cir research on registration and fair use
7/11/13		1	5th v 9th Cir research on registration and fair use
7/12/13	0.4		Surveyed Caner's public statements re: case
7/13/13		1	5th v 9th Cir research on registration and fair use
7/15/13		1	5th v 9th Cir research on registration and fair use
7/16/13		3	Drafting 5th v 9th Cir Summary on registration and fair use
7/16/13	0.2		Reviewed new DMCA takedown correspondence from Youtube
7/19/13		1	Research on "work for hire"
8/18/13	0.4		Drafted and sent counternotices to Youtube
9/9/13	1		Swearing in to N.D. Tex.
9/18/13	0.4		Drafted and filed Motion to Waive Local Counsel
9/28/13	0.4		Prelim research on severance, then tasked JA to dive deeper
10/4/13		1	Research for Motion to Sever
10/5/13		1.5	Research/Drafting Motion to Sever
10/6/13		1.5	Research/Drafting Motion to Sever
10/7/13		5	Drafting Motion to Sever
10/14/13	0.1		Discussed service with Dustin ³
10/16/13	0.4		Reviewed amended complaint
10/17/13	0.2		Discussed case with Jonathan ⁴
10/17/13	0.2		Discussed severance with Jason
10/28/13	0.1		Discussed case with Josh ⁵
10/29/13	0.1		Discussed case with Josh

² Rodney Patterson, another attorney originally planned to be part of the legal team.

³ Dustin Gaines, a member of Plaintiff's legal team.

⁴ Jonathan Autry, former co-Defendant.

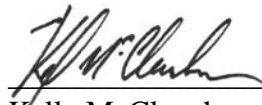
⁵ Joshua Autry, Jonathan Autry's attorney.

11/1/13	0.5		Discussed case with Josh
11/17/13	0.1		Requested position from Dustin on procedural motions
11/20/13	0.6		Research on govt regs and copyright, and discussed with Josh
11/20/13		1	Research for Motion to Sever
11/21/13		1.2	Research on derivative fair use
11/22/13	0.8		Research on govt regs and copyright, and discussed with Josh
11/22/13		0.5	Research on cross-claims
11/22/13		3	Research for Motion to Sever
11/22/13	0.4		Discussed FOIA requests with Jason
11/22/13	0.5		Discussed case with Josh
11/23/13		0.5	Research on cross-claims
11/23/13		4	Finished draft of Motion to Sever
11/23/13		0.8	Research on derivative fair use
11/24/13	0.4		Edited Motion to Sever and discussed with Josh
11/25/13	0.1		Discussed case with Dustin
11/25/13	0.2		Emailed Dustin and Josh about deadlines
11/25/13	0.5		Finished and filed Motions to Sever and Stay
11/25/13	0.2		Discussed Josh's Motion to transfer venue and gave Jason's position
11/26/13	0.2		Discussed division of labor with Josh
11/26/13	0.7		Reviewed Josh's draft MTD 12(b)(2)-(3) and edited
11/26/13	3.5		Researched for MTD 12(b)(7)
11/26/13	0.8		Discussed case with Josh
11/26/13	2.2		Reviewed Josh's draft MTD 12(b)(6) and edited and filed
11/26/13	1.8		Drafted and filed MTD 12(b)(7)
11/27/13		1.2	Research of Copyright Circulars – pending applications
11/27/13	0.5		Discussed case with Jason
11/27/13	0.2		Requested copyright applications (first attempt)
12/1/13		0.2	Research on Government contracts and indemnification
12/2/13		0.8	Research on Government contracts and indemnification
12/3/13	0.9		Discussed case with Josh
12/3/13	0.4		Discussed effect of Caner's move to GA on case with Jason and Josh
12/5/13	0.2		Discussed possible countersuit with Jason
12/7/13	0.2		Researched limits on dissemination and discussed with Josh
12/7/13	0.2		Discussed copyright applications with Jason
12/9/13		1.5	Visit to Copyright Office to find application numbers
12/13/13	0.3		Discussed scheduling with Dustin and Josh
12/17/13	0.3		Drafted and filed Reply for Stay
12/17/13	0.2		Discussed Viddler embedded comments with Jason

12/19/13	0.3		Requested copyright applications (second attempt)
12/22/13	0.2		Discussed case with Josh
12/29/13	0.6		Reviewed Caner's Twitter Q&A
12/30/13	0.5		Discussed Viddler records with Matt @ Viddler
12/30/13	0.2		Researched third party subpoenas
12/31/13	0.1		Drafted Viddler subpoena and served on Josh and Dustin
1/3/14	0.5		Teleconference with Gibbs ⁶ and briefed Jason afterwards
1/6/14	0.4		Reviewed Caner's briefs
1/6/14	0.2		Sent supplemental info to Copyright
1/7/14	0.2		Drafted and filed response to Motion to transfer venue
1/15/14	0.1		Reviewed Order for Status Report and emailed Dustin about it
1/20/14	0.2		Drafted and filed Motion to stay
1/20/14	4.3		Researched for Replies and drafted and filed
1/22/14	0.1		Served Viddler subpoena
1/29/14	0.2		Discussed Caner's deposit with Copyright
1/31/14		0.5	Called Copyright Office re: opposing pending applications
1/31/14	0.6		Discussed subpoena with Bernie @ Viddler
2/11/14		1.2	Drafting Summary of copyright fee shifting
2/11/14	0.3		Drafted and filed Notice of Caner's concession
2/12/14	0.2		Sent Litigation Statements to Copyright
2/18/14	0.2		Discussed tags and comments with Bernie @ Viddler
4/20/14	0.6		Researched fee shifting in 5th Cir.
5/1/14	0.3		Research for Bill of Costs

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true to the best of my knowledge.

Date: May 1, 2014


 Kelly McClanahan, Esq.

⁶ David Gibbs, Caner's attorney.